

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
DEC 19 2005

[Signature]

RAMON FLORES-VENTURA,

Movant,

-VS-

UNITED STATES OF AMERICA,

Respondent.

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CIV 05-4132

CR 02-40072

MEMORANDUM OPINION
AND ORDER

Movant, Ramon Flores-Ventura, filed a motion to reconsider, Doc. 5, requesting that the Court reconsider its dismissal of his Motion to Vacate, Correct or Set Aside Sentence pursuant to 28 U.S.C. § 2255. As the Court held in denying the § 2255 motion, the Supreme Court has not made *United States v. Booker*, 543 U.S. 220 (2005), retroactively applicable to cases on collateral review. The Eighth Circuit Court of Appeals' held in *Never Misses a Shot v. United States*, 413 F.3d 781, 783 (8th Cir. 2005), that *Booker* "does not apply to criminal convictions that became final before the rule was announced, and thus does not benefit movants in collateral proceedings." Thus, Movant is not entitled to relief under *Booker* and his claims in the § 2255 motion are barred by the one-year period of limitations in § 2255. The motion to reconsider will be denied. Accordingly,

IT IS ORDERED:

1. That Movant's motion to reconsider, Doc. 5, is denied.

Dated this 19th day of December, 2005.

BY THE COURT:

[Signature]
Lawrence L. Piersol
Chief Judge

ATTEST:

JOSEPH HAAS, CLERK.

BY:

[Signature]
(SEAL) DEPUTY